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12 the People of the State of California

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF FRESNO

15 THE PEOPLE OF THE STATE OF CALIFORNIA, ) CASE NO.  
16 )  
Plaintiff, )  
17 )  
v. ) COMPLAINT FOR  
18 ) INJUNCTION, CIVIL  
CALIBER BODYWORKS, INC., a California ) PENALTIES AND OTHER  
19 Corporation, doing business as CALIBER ) EQUITABLE RELIEF  
COLLISION CENTERS; D.R. LONG, LTD, doing )  
20 business as CALIBER COLLISION CENTERS; )  
CHAPPARONE AUTO BODY OF MIRAMAR, )  
21 INC.; SAN MARCOS AUTO BODY, INC.; F & R )  
VENTURES, INC.; RICHARD J. KELLEJIAN, )  
22 INC.; CORWIN INDUSTRIES CORPORATION; )  
MATTHEW OHRNSTEIN, an individual; BILL )  
23 LAWRENCE, an individual; DAVID C. RIGGAN, )  
an individual; DEBRA L. MORRIS, an individual; )  
24 TOM COLEMAN, an individual; AND DOES 1 )  
THROUGH 20, INCLUSIVE, )  
25 )  
Defendants. )  
26 )  
27 )  
28 )

1 Plaintiff, the People of the State of California (“Plaintiff” or the “People”), by and through Bill  
2 Lockyer, Attorney General of the State of California, alleges on information and belief:

3 **DEFENDANTS**

4 1. Defendant Caliber Bodyworks, Inc., doing business as Caliber Collision Centers  
5 (“Caliber”), is a California corporation with its principal place of business at 17771 Cowan  
6 Avenue, Suite 100, Irvine, California 92614. Caliber is registered with the Bureau of Automotive  
7 Repair to do business at various locations. As such, Caliber Bodyworks, Inc. advertises to, and  
8 repairs cars for, California consumers.

9 2. Defendant D.R. Long, LTD. (“Long”), doing business as Caliber Collision  
10 Centers, has its principal place of business at 17771 Cowan Avenue, Suite 100, Irvine, California  
11 93614. Long is registered by the Bureau of Automotive Repair to do business at various  
12 locations and is a wholly owned subsidiary of Caliber. As such, Long advertises to, and repairs  
13 cars for, California consumers.

14 3. Defendant Chapparone Auto Body of Miramar, Inc. (“Chapparone”), is a  
15 California Corporation with its principal place of business at 17771 Cowan Avenue, Suite 100,  
16 Irvine, California 93614. Chapparone is registered with the Bureau of Automotive Repair and is  
17 a wholly owned subsidiary of Caliber. Chapparone advertises to, and repairs cars for, California  
18 consumers.

19 4. Defendant San Marcos Auto Body, Inc. (“San Marcos”), is a California  
20 Corporation, with its principal place of business at 17771 Cowan Avenue, Suite 100, Irvine,  
21 California 93614. San Marcos is registered with the Bureau of Automotive Repair and are a  
22 wholly owned subsidiary of Caliber. San Marcos advertises to, and repairs cars for, consumers in  
23 California.

24 5. F & R Ventures, Inc. (“F & R”), has its principal place of business at 17771  
25 Cowan Avenue, Suite 100, Irvine, California 93614. F & R is registered to do business with the  
26 Bureau of Automotive Repair at various locations and is a wholly owned subsidiary of Caliber.  
27 As such, F & R advertises to, and repairs cars for, California consumers.

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1           6.       Defendant Richard J. Kellejian, Inc. (“Kellejian”) has its principal place of business  
2 at 17771 Cowan Avenue, Suite 100, Irvine, California 93614. Kellejian is registered to do  
3 business with the Bureau of Automotive Repair at various locations and is a wholly owned  
4 subsidiary of Caliber. As such, Kellejian advertises to, and repairs cars for, California consumers.

5           7.       Defendant Corwin Industries Corporation (“Corwin”) has its principal place of  
6 business at 17771 Cowan Avenue, Suite 100, Irvine, California 93614. Corwin is registered to do  
7 business with the Bureau of Automotive Repair at various locations and is a wholly owned  
8 subsidiary of Caliber. As such, Corwin advertises to, and repairs cars for, California consumers.

9           8.       Defendant Matthew Ohrnstein (“Ohrnstein”) is an individual and is sued in his  
10 individual capacity. Ohrnstein is the Chief Executive Officer, the Chairman, and the Director of  
11 Caliber. Ohrnstein is also the Chief Executive Officer of Chapparone, Long, Kellejian, F & R,  
12 San Marcos and Corwin. As such, Ohrnstein participates in the direction, control and  
13 management of Caliber, Chapparone, Long, F & R , Corwin, and San Marcos and has ratified the  
14 activities of the defendants complained of herein.

15           9.       Defendant Bill Lawrence (“Lawrence”) is an individual and is sued in his  
16 individual capacity. Lawrence is the President and Chief Operating Officer of Caliber. As such,  
17 Lawrence participates in the direction, control and management of Caliber and has ratified the  
18 activities of Caliber complained of herein.

19           10.      Defendant David C. Riggan (“Riggan”) is an individual and is sued in his individual  
20 capacity. Riggan is Caliber’s Senior Vice President and Chief Financial Officer. Riggan has  
21 responsibility for all of Caliber’s accounting and information technology functions, financial  
22 reporting, cash management, operations budget, risk management, and corporate financial  
23 planning. Riggan is also the Secretary and Chief Financial Officer for Chapparone, F & R, San  
24 Marcos, Long, Corwin and Kellejian and is the vice president and treasurer of F&R. As such,  
25 Riggan participates in the direction, control and management of Caliber, Chapparone, F & R, San  
26 Marcos, Long, Corwin, and Kellejian and has ratified the activities of Caliber, Chapparone, F &  
27 R, San Marcos, Long, Corwin, and Kellejian complained of herein.

28           11.      Defendant Debra L. Morris (“Morris”) is an individual and is sued in her individual

1 capacity. Morris has served as Chapparone’s Vice President, Secretary and Treasurer. Morris  
2 has served as the Secretary and Chief Financial Officer of Long, Caliber, and Kellejian. Morris  
3 also acted as the secretary, vice president, and treasurer of San Marcos and as vice president of  
4 Kellejian. As such, Morris has participated in the direction, control and management of  
5 Chapparone, Long, Caliber, Kellejian, and San Marcos and has ratified the activities of  
6 Chapparone, Long, Caliber, Kellejian and San Marcos complained of herein.

7 12. Defendant Tom Coleman (“Coleman”) is an individual and is sued in his individual  
8 capacity. Coleman is the Senior Vice President of California operations for Caliber. Coleman  
9 also has managed Caliber’s Costa Mesa location, has had an internal consulting role where he was  
10 instrumental in developing many of Caliber’s initial standard operating procedures, and has acted  
11 as Vice President of Caliber where he created proprietary management tools designed to analyze  
12 key center performance indicators. As such, Coleman participates in the direction, control and  
13 management of Caliber and has ratified the activities of Caliber complained of herein.

14 13. Plaintiff is not aware of the true names and capacities of the defendants sued herein  
15 as DOES 1 through 20, inclusive, and therefore sues these defendants by such fictitious names.  
16 Each fictitiously named defendant is responsible in some manner for the violations of law herein  
17 alleged. Plaintiff will amend this complaint to add the true names of the fictitiously named  
18 defendants once they are discovered. Whenever reference is made in this complaint to  
19 “defendants” such reference shall include Does 1 through 20 and defendants Caliber, Long,  
20 Chapparone, Kellejian, F & R, San Marcos, Corwin, Morris, Ohrnstein, Riggan, Coleman and  
21 Lawrence.

22 14. Whenever reference is made in this complaint to any act of any corporate or  
23 other business defendant, such allegation shall mean that said defendant and its owners, officers,  
24 directors, agents, employees, or representatives did or authorized such acts while engaged in the  
25 management, direction, or control of the affairs of defendants and while acting within the scope  
26 and course of their duties.

27 15. Whenever reference is made in this complaint to any act of defendants, such  
28 allegation shall mean that each defendant acted individually and jointly with the other defendants

1 named in that cause of action.

2 16. Whenever in this complaint reference is made to any act of any individual  
3 defendant, such allegation shall be deemed to mean that said defendant is and was acting (a) as a  
4 principal, (b) under express or implied agency, and/or (c) with actual or ostensible authority to  
5 perform the acts so alleged on behalf of every other defendant herein.

6 17. At all times mentioned herein, each defendant knew or realized, or should have  
7 known or realized, that the other defendants were engaging in or planned to engage in the  
8 violations of law alleged in this complaint. Knowing or realizing that other defendants were  
9 engaging in such unlawful conduct, each defendant nevertheless facilitated the commission of  
10 those unlawful acts. Each defendant intended to and did encourage, facilitate, or assist in the  
11 commission of the unlawful acts, and thereby aided and abetted the other defendants in the  
12 unlawful conduct.

13 18. The violations of law alleged in this complaint occurred in Fresno County and  
14 elsewhere throughout California.

15 **FIRST CAUSE OF ACTION**  
16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
17 **(UNFAIR COMPETITION)**  
(Against All Defendants)

18 19. Plaintiff, the People of the State of California, restates and incorporates paragraphs  
19 1 through 18 as though fully set forth herein.

20 20. Beginning on an exact date unknown to Plaintiff, defendants, and each of them, in  
21 conducting their automotive repair business have engaged in, and are still engaging in, acts of  
22 unfair competition, within the meaning of Business and Professions Code section 17200,  
23 including, but not limited to, the following acts:

24 A. Invoicing and accepting payment from consumers and/or their insurance  
25 companies for goods and/or services that were not provided or performed.

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27 B. Violating Business and Professions Code section 9884.8 by 1) failing to  
28 give customers a written estimated price for labor and parts necessary for a specific job; 2) using

1 rebuilt, used or reconditioned parts and failing to clearly state that fact on the invoice; and 3)  
2 failing to list service and parts separately on the invoice.

3 C. Violating Business and Professions Code section 9884.9(a) by performing  
4 work and/or allowing charges to accrue before the customer gave authorization to proceed.

5 D. Violating 16 California Code of Regulations section 3353 by engaging in  
6 work without proper prior customer authorization including: 1) performing work prior to  
7 providing the customer with a written estimate for parts or labor; 2) failing to document oral  
8 authorizations; and 3) failing to provide an estimate for repairs after a tear-down has been  
9 performed.

10 E. Violating 16 California Code of Regulations section 3371 by publishing,  
11 uttering, making or causing to be published, uttered or made any false or misleading statement or  
12 advertising which is known to be false or misleading or which by the exercise of reasonable care  
13 should be known to be false or misleading.

14 F. Violating 16 California Code of Regulations section 3373 by billing for  
15 parts and labor on an invoice and performing labor or supplying parts in a manner that caused the  
16 document to be false or misleading and/or have the tendency or effect of misleading or deceiving  
17 customers or the public.

18 G. Willfully departing from or disregarding accepted trade standards for good  
19 and workmanlike repair without the consent of the owner or the owner's duly authorized agent.

20 H. Violating Civil Code section 1770(a) subsection 5 by representing that  
21 goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or  
22 quantities which they did not have.

23 I. Violating Civil Code section 1770(a) subsection 6 by representing that  
24 goods are original or new if they have deteriorated unreasonably or are altered, reconditioned,  
25 reclaimed, used or secondhand.

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27 J. Violating Civil Code section 1770(a) subsection 7 by representing that  
28 goods or services are of a particular standard, quality or grade, or that goods are of a particular

1 style or model, if they are of another.

2 K. Violating Civil Code section 1770(a) subsection 15 by representing that a  
3 part, replacement or repair service is needed when it is not.

4 L. Violating Civil Code section 1770(a) subsection 16 by representing that the  
5 subject of a transaction has been supplied in accordance with a previous representation when it  
6 has not.

7 M. Violating Business and Professions Code section 17500 as more  
8 particularly described in paragraphs 22 and 23 below.

9 **SECOND CAUSE OF ACTION**  
10 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**  
11 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

12 21. Plaintiff, the People of the State of California, restates and incorporates  
13 paragraphs 1 through 18 and 20 as though fully set forth herein.

14 22. Beginning on an exact date unknown to Plaintiff and continuing until the present,  
15 defendants, acting directly or indirectly with intent to induce members of the public to engage  
16 defendants' automotive repair services and to buy repair parts being sold by defendants, made or  
17 caused to be made, in violation of Business and Professions Code section 17500, untrue or  
18 misleading statements that include, but are not limited to the following:

19 A. Representing on invoices and final bills that specific services were  
20 rendered, and demanding and accepting payment for those services, when defendants did not  
21 perform those services.

22 B. Representing on invoices and final bills that specific parts or products had  
23 been installed or replaced in consumers' automobiles, and demanding and accepting payment for  
24 those products or parts, when those parts or products had not been installed.

25 C. Representing that defendants would only charge consumers the amounts  
26 set forth on estimates provided and approved by consumers and then charging consumers for  
27 unauthorized services or parts, some of which were never performed or installed.

28 23. Defendants knew, or by the exercise of reasonable care should have known,  
at the time of making these statements, or causing these statements to be made, that the

1 statements set forth in paragraph 22 were untrue or misleading.

2 WHEREFORE, the People pray for judgment as follows:

3 1. That pursuant to Business and Professions Code section 17203, defendants, their  
4 successors, agents, representatives, employees and all persons who act in concert with defendants  
5 be permanently enjoined from engaging in unfair competition as defined in Business and  
6 Professions Code section 17200, including, but not limited to, the acts and practices alleged in this  
7 complaint.

8 2. That pursuant to Business and Professions Code section 17535, defendants, their  
9 successors, agents, representatives, employees and all persons who act in concert with defendants  
10 be permanently enjoined from making any untrue or misleading statements in violation of Business  
11 and Professions Code section 17500, including, but not limited to, the untrue or misleading  
12 statements alleged in this complaint.

13 3. Pursuant to Business and Professions Code section 17206, that the Court assess a  
14 civil penalty of two thousand five hundred dollars (\$2,500) against defendants for each violation  
15 of Business and Professions Code section 17200, as proved at trial, but in an amount of not less  
16 than \$25,000,000.00.

17 4. Pursuant to Business and Professions Code section 17536, that the Court assesses  
18 a civil penalty of two thousand five hundred dollars (\$2,500) against defendants for each violation  
19 of Business and Professions Code section 17500, as proved at trial, but in an amount of not less  
20 than \$25,000,000.00.

21 5. That defendants be ordered to make direct restitution of any money or other  
22 property that may have been acquired by their violations of Business and Professions Code  
23 sections 17200 and 17500.

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27 6. That the People recover their costs of suit.

28 7. Such other and further relief that the Court deems just and proper.

1 DATED: December 4, 2003  
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